

THE ALLEGHENY PARKS

A Paper Read Before the Historical Society of Western Pennsylvania

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The casual visitor to Pittsburgh, who has occasion to visit the North Side, is apt to remark on the beautiful and extensive Park system which is located in the very heart of old Allegheny City, and he will very naturally wonder why, in the old City of Pittsburgh proper, Parks are conspicuous by their absence.

A very natural inference is that credit for the existence of the Allegheny Parks is due to the superior foresight on the part of the forefathers of Allegheny City, and that the founders of Pittsburgh are to blame for failing to include ample space for Parks in the original plan.

Nothing could be further from the truth, as to the Allegheny Parks. Their existence as Parks is purely accidental insofar as those responsible for the plan of the City were concerned.

The Legislature of Pennsylvania, by an Act of Assembly passed March 12, 1783, provided for the sale of certain lands for the purpose of redeeming and paying off the Certificates of

Depreciation given to the officers and soldiers of the Pennsylvania Line; and for that purpose, located and laid off a certain tract of land described as "Beginning where the western boundary of this State crosses the Ohio River; thence up to the said River to Fort Pitt; thence up the Allegheny River to the mouth of Mogulboughtiton Creek (now Mahoning Creek in Armstrong County); thence by a west line to the western boundary of the State; thence south by the said boundary to the place of beginning; reserving to the use of the State three thousand acres of not less than one mile in depth from the Allegheny and Ohio Rivers, and extending up and down said Rivers, from opposite Fort Pitt, so far as may be necessary to include the same, and the further quantity of three thousand acres on the Ohio, and on both sides of the mouth of Beaver Creek, including Fort Mackintosh."

It will be apparent that these two reservations out of the body of so-called Depreciation Lands included the sites of Allegheny City and Beaver.

The story of the Depreciation Lands, their settlement and development, is very interesting. It was a dark and bloody land. Room cannot be given to the matter in this paper further than to state that the section North and West of the Ohio and Allegheny was, in settlement, far behind the country South of the Ohio. This was due, at first, to the longer continued fear of Indian raids, and afterwards, to the uncertainty of the land titles caused by the long litigation and struggles between owners of the record title purchased by the land speculators at the Public Sales in Philadelphia and the actual settlers who claimed title by occupation and improvement.

The Allegheny Parks had their origin in the Act of Assembly passed September 11, 1787, which recites the former Act already referred to locating the Reserve Tract, and states that a sale of said tract, if laid out and disposed of to the best ad-

vantage, will furnish a considerable sum of money towards discharging the debts due by the State. The Supreme Executive Council was empowered to cause to be laid out and surveyed, a town, in lots, with a competent and suitable number of outlots, for the accommodation thereof in said tract and to cause to be laid out and surveyed the residue of said tract, in lots, etc., and authorizing the sale of the whole of said lots, etc., but providing, however, that there should be reserved, out of the lots of the said town, for the use of the State, so much land as they shall deem necessary for a Court House, gaol and market house, for places of public worship, and for burying the dead, and *without the said town, one hundred acres, for a common pasture.*

It will be noted that it was apparently the intention in this Act to locate the county seat on the North Side. The Act creating Allegheny County, passed September 24, 1788, provided for the location of the public buildings in the Reserve tract, but the provision was repealed by the Act of April 13, 1791, which directed the location of the County buildings in Pittsburgh.

This, then, is the origin of the Allegheny Parks, the reservation of certain land in the plan of the Reserve Tract as a common pasture for the owners of the In Lots in the Town Plan. Subsequent events proved that the idea had never entered the minds of those responsible for the setting aside of the land now occupied by the Allegheny Parks, that the land was to be used as a pleasure ground for the people, or to add to the beauty of the City.

Yet this should be slight cause for wonder. When these laws were passed, nearly all of Northwestern Pennsylvania was a vast wilderness, with here and there a lone settler's cabin with a small clearing around it and, at very long intervals, small settlements. Even Pittsburgh in 1783 had less than one hundred houses and five hundred inhabitants. With land so plentiful it would have, no doubt, seemed incredible in those days that the

time would ever come when all lower Pittsburgh and Allegheny would be a mass of closely congested buildings with narrow streets, alleys and courts where God's fresh air and sunshine is a luxury.

Every time I am in New York City and see Battery Park, that beautiful spot of green right on the very nose of the City's face, it makes me feel badly to think of what it would have meant to Pittsburgh if the Point had been reserved for a Park. What a wonderful location for such a Park at the union of three of the greatest rivers on the American Continent. And if Fort Pitt had been preserved, surrounded by a beautiful pleasure ground, the Point would have been a Mecca, one of the historic spots of America. The Fort was a massive piece of masonry, costing over \$300,000, which was a very large sum in those days.

A friend of mine told me a few years ago that while sinking some exploratory shafts in planning the foundations of the Pennsylvania Freight Warehouses, he came across a very fine piece of masonry some sixty feet under ground. It was a portion of the Wall of Fort Pitt, over six feet in thickness and in excellent condition.

And yet all that we have left of that magnificent relic is Fort Boquet, a mere redoubt, and we would not even had that if it had not been for the noble, unselfish, patriotic efforts of a band of devoted women. All honor to the Daughters of the American Revolution. Pittsburgh will owe them a debt as long as there is a Pittsburgh.

Our citizens do not realize that the unfavorable impressions received and adverse comments made by visitors who make but hasty stops in our City are due in great part to the fact that there are no breathing places or beauty spots in the lower part of the City. Nearly all of our sister large Cities have many

ornamental Public Squares and small parks which add much to the beauty and attractiveness of the locality.

The Allegheny Parks, or more properly, Allegheny Commons, had a checkered and varied career until the State Legislature by Act of Assembly, in 1867, permanently fixed the character of Parks upon the Common Grounds. Until that date, the Commons had a continual struggle for existence. Apparently every possible excuse was invoked to justify an appropriation of the land occupied by them for public or private purposes.

Eighteen acres were given by the Legislature, with the concurrence of the lot owners, to the Western Theological Seminary.

Thirty acres were given by the Legislature to the Western University.

Ten acres were appropriated for the Western Penitentiary.

The Ohio and Pennsylvania Railroad was granted the right of way through the Common now occupied by the railroad tracts of the Pennsylvania Company. As late as 1901 Allegheny City Councils granted to the Railroad the use of the portion of the South Park south of Stockton Avenue, between Federal Street and Sherman Avenue.

In some cases, where streets were opened or relocated, portions of the Commons were granted in compensation and the Commons, of course, had to suffer. The only wonder is that any portion was left for the use of the people.

The Allegheny Commons were a prolific source of litigation for very many years. Many leading cases in American Jurisprudence on the Right of Common originated in the dispute concerning the North Side Parks.

The Western Theological Seminary case is historic; a brief reference to it may not be out of place in this connection.

An Act of Assembly approved April 17, 1827, recited that the residents, lot owners and land owners in Allegheny, opposite Pittsburgh, were desirous that a Seminary of the Presbyterian Church be established in the town of Allegheny, and had held a public meeting and by writing duly signed had granted to the General Assembly of the Presbyterian Church all their claim to eighteen acres and thirty-seven perches of land. This grant, with the names of the signers, was embodied in the Act and confirmed by it. A number of additional releases were afterwards secured, executed and recorded in 1828, 1829, 1834 and 1846.

It appears, however, that all of the In-Lot holders had not signed these releases. As is usually the case, some disgruntled individual may be depended upon to make trouble, and this case was no exception. As far as the Seminary was concerned, the question was decided in its favor in the case of Samuel Carr versus Mary Wallace in 1837, reported in the Supreme Court Reports, 7 Watts, 394. This very interesting opinion gives a concise summary of the question involved. The Seminary won its case on the ground that the complainant was estopped after having stood by passively, suffering the Seminary to erect expensive buildings in a most conspicuous place, under an erroneous opinion of title, without making known his claims. The plain inference being, however, that if he had exercised his legal rights at the proper time, the result would have been different.

The Act of Assembly incorporating the City of Allegheny passed in 1840, specifically vested the right of common in the City of Allegheny for such public uses as are recited in the Act of 1787 and such other public uses as the Councils may direct, provided, however, that no part of the land allotted for common purposes shall be applied to any other purpose without releases being first had and obtained from such persons as are entitled to a right of common.

Apparently owing to fear of further litigation and also to the complications affecting the title to the Seminary property, a compromise was effected between the City of Allegheny and the Trustees of the Seminary on December 20, 1850; the Trustees executing to the Mayor, Aldermen and Citizens of Allegheny City a Perpetual Lease conveying all the property included in the original grant except about one acre on the corner of Ridge and Irwin Avenues, reserving an annual ground rent of \$2,100, which is still being paid. An agreement was executed at the time providing for the laying out of streets through said property.

Unfortunately, this transfer to the City did not result in the property again becoming public common ground. On the contrary, a plan of lots was laid out on the tract which occupied the ground approximately bounded by Ridge Avenue, Martin Avenue, Martindale Street and Irwin Avenue. Part of this property was sold by the City on ground rent for a sum more than sufficient to pay the ground rent to the Seminary. An Act of Assembly passed in 1870, provided that the remaining portion of the Seminary Grant which had not been sold should become a portion of the public park. The greater part of Monument Hill is on this portion. The original Theological Seminary building stood where the Monument now stands.

Any one wishing to go more deeply into the story of the Seminary Grant will be much interested in a report prepared by Judge Carpenter some years ago, which was of great assistance in the preparation of this paper.

The Western University was not so successful with its grant from the Legislature of a portion of the Allegheny Commons.

An Act of Assembly passed in 1819 vested in the Trustees of the Western University the title to forty acres of the Commons lying between the town and outlots subject to the right of pasture granted in the Act of 1787. The Trustees of the Uni-

versity brought an action of ejectment in 1824 for possession of the property on the strength of the grant from the State. In the case of the Seminary grant, the majority of the inlot holders had released their right of common. The Trustees of the University, however, apparently made no effort to secure such releases, or to placate the inlot owners.

In this case, both the lower and the Supreme Court fully upheld the rights of the Commoners, holding that they were unextinguished and unextinguishable, except by their own consent.

It is well for the North Side that this was the case, as the loss of forty acres would have played sad havoc with the Allegheny Parks.

This is not to be considered a reflection on the value of educational institutions, for the existence of the Western University certainly did not depend upon the validity of this grant, and the securing of light, air and breathing space to the people for many generations to come was certainly of inestimable value.

Another use of the Commons for other purposes was the location of the Penitentiary thereon by the Act of 1817, which appropriated ten acres of the common ground for that use.

The Commoners apparently conceded the right of the State, it having granted the land in the first place, to use part of the Commons for public purposes. They seem to have also taken the position that the erection of the prison was a matter of such public benefit and interest that they were not entitled to compensation for loss of the right of Commons, as no objection was raised. The completed building cost \$183,000 and was located very near, if not upon, the site of the Conservatory in the West Park. Its architecture was said to be classic and imposing. Miss Killikelly in her "History of Pittsburgh," states

that its demolition was deplored by the better class of the community. At the present day, however, the former site of the Penitentiary is certainly much more valuable to the people at large, used as a breathing space and resting spot, than if it were occupied by a huge stone castle-like building.

The Penitentiary proper only occupied six acres, the remaining four acres were fenced in and appropriated for a burial ground and pasture lot for the use of the prison. This was seriously objected to by the citizens and mass meetings were held to protest and Councils were importuned to remedy the evil. After ineffectual efforts to settle the matter, the Councils on May 9, 1838, directed the Street Commissioners to remove the nuisance within thirty days and dispose of the materials, which was carried out, the Prison Inspectors offering no objection. The Legislature of 1840 passed an Act revesting in the Commoners so much of the public ground on the west side of the prison wall which was not necessary to the use of the prison, and directed that the ground be restored to its original condition.

In 1883, the State passed legislation removing the Penitentiary to its present location at Woods Run, and restored the ground occupied by it to Allegheny City for Park purposes.

It seems strange that the removal of the Penitentiary was made the occasion for another attempt on the part of the Western University to occupy part of the Commons. After this institution had lost the title to the forty acres of the Commons granted to it by the Legislature in 1819, that body appropriated to the University \$2,400 annually for five years, and also \$12,000, with which the first University Building was erected in 1830 on the corner of Third Avenue and Cherry Alley in Pittsburgh. This building was destroyed in the terrible fire of 1845, the property was sold and a new site purchased on Duquesne Way, where a new building was erected, which was also destroyed

by fire in 1849. In 1854, a new location was purchased at the corner of Ross and Diamond Streets, and the third Western University building erected, which was only demolished within the past year to make way for new Court House and City Hall.

In 1882 the County Court House was burned and the County Commissioners purchased the University Building. This left the institution without a home. The vacant ground left by the removal of the Western Penitentiary, so centrally and conveniently located, seemed a tempting location, and a strong effort was made by the officials and friends of the University to substitute its buildings for those belonging to the Penitentiary.

A vigorous protest was made, however, by the citizens of Allegheny, and a petition to the Legislature was prepared and signed by the officials of both branches of Council, remonstrating against the Commons being used for any other purpose than that of public parks. The opposition proved effective as, in pursuance of this petition, an Act of Assembly was passed, approved June 22, 1883, providing that the title of so much of the Common ground as was occupied by the Western Penitentiary should be vested in the City of Allegheny for use as a portion of the public parks of said City. Although the friends of this institution, which has done and is doing so much for our community, were doubtless greatly disappointed over the double failure to secure what seemed to be a so desirable location for the institution, yet its best friends today will all admit that, in the final outcome, it has been far better that it did not find a permanent home until the present magnificent location in the Schenley Farms was available, which appears to have been providentially preserved for this purpose.

The right of way through the West Park, now occupied by the Pittsburgh, Ft. Wayne and Chicago Railroad, was granted to the Ohio and Pennsylvania Railroad in 1850. The question of the right of common or pasturage as to the Allegheny Com-

mons was squarely raised and decided in a celebrated case—Bell vs. the Ohio and Pennsylvania Railroad, reported in Pennsylvania State Reports, Vol. 25, page 161. An inlot owner attempted to restrain the Railroad Company from taking a portion of the common ground.

In this case, the Court held that “the right to take herbage by the mouth of one’s cattle gives the commoner no incidental right to keep the common open as an ornament to his dwelling or as contributing to his personal pleasure or convenience.”

It is stated in the opinion that the Common has been without herbage for years and uses the words, “The herbage is about as abundant as that which might be found in a recent disinterred street of Herculaneum.”

Justice Lewis, who wrote this opinion, had evidently been in the habit of taking rambles through Allegheny during his various trips to Pittsburgh.

Few of the younger generation probably know that there was, at one time, a graveyard located in the Park at the junction of Stockton and Sherman Avenues, which occupied about one and one-half acres and was well filled with graves. An Act of Assembly was passed in 1861 authorizing the Councils to cause to be disinterred and removed the bodies buried there, and to bury them in one of the public cemeteries. This was done, and a paved street now runs through the old burial ground.

Attempts were made as early as 1856 to ornament and beautify the South and part of the East Common by private subscription, Ordinances being passed at that time by the City Councils, allowing this to be done. Very little was accomplished by these efforts, however. The right of pasturage still existed and was exercised to some extent until the Commons were finally turned over to the City for Park purposes by the Legislature, the same power which had created them at the first.

In 1867, the first Act of Assembly was passed appropriating the Common Grounds to public use as Public Parks. The preamble of this Act is interesting: * * * “Whereas, the present condition of the extensive grounds of the City of Allegheny, known as Common Grounds, is unproductive of any good to the said City, as owners of the soil, or to the owners of right of common therein; and

“Whereas, the same can be converted into parks, for the recreation and enjoyment, as well as the advancement of the health and prosperity of the citizens of said City, without any injury to said rights; now, for the purpose of securing the conversion of the said grounds into public parks for the use of the public,

“Be it enacted, etc., That the Common Grounds of the City of Allegheny be, and they are, hereby appropriated to the use of the public parks.”

This Act provided a method of divesting all the inlot holders of their right of commonage by the appointment of viewers by the Court of Quarter Sessions, before whom, after due publication, all claims for damages were to be filed, otherwise all rights of common to be held, released and forever divested.

Said viewers to file a report of benefits and damages which should be final and conclusive without exception or appeal.

This Act also created a Park Commission, with power to improve the said Parks at a cost not to exceed \$200,000, and for a bond issue to pay for same and for the special assessment necessary to pay the interest and principal of said bonds. It also provided that when the said Parks were completed, they were to pass under the exclusive control of the City Councils and the powers of the Commission should thereupon expire.

The proceeding to divest the rights of common provided for in this Act was instituted at No. 3 June Term, 1867, in the Court

of Quarter Sessions of Allegheny County. No claims for damages were filed, but, strange to say, a remonstrance was filed, signed by a number of citizens claiming to be inlot holders, and, therefore, entitled to the right of common. The report of the Viewers, in spite of being a supposedly dry legal document, is, really, quite readable and a summary of it seems in place in this paper.

Alexander Gordon, David A. Stewart and Richard Hays were appointed viewers by the Court of Quarter Sessions on June 15, 1887.

Their report was presented and approved on August 31, 1877. This report is well worded and quite interesting for a legal document. It recites that no claim for damages, as such, have been filed, but that a remonstrance was filed, which contained a recital of the inlot holders and a reference to certain decisions and opinions affecting the title of the Commoners to their right of commonage, and a formal denial of the right of the Legislature to pass a law to annul the contract when the object of the grant was to enhance the value of the land, being matters with which the Viewers considered they had nothing to do, but, however, considering that the same might be regarded as a notification of claims for damages, it was so regarded by the Viewers, who thereupon proceeded to view and estimate the damages of the signers, as required by law.

The Viewers, therefore, further report that having examined the location of all the inlots in the City of Allegheny with reference to the rights of commonage and proximity to the Common Grounds appropriated for Public Parks, and having examined the said Common Grounds not only with reference to the herbage and facilities for commonage, but also with reference to the improvement of the same for Public Parks, they find that the said Common Grounds are in the heart of a populous City and that due regard to the health, cleanliness, comfort and hap-

piness of the community require the enactment of laws now in force preventing the running at large of commonable beasts which very materially affects the value of said right of commonage. That upon large portions of the Commons there are vast deposits of rubbish which has entirely destroyed the herbage and that large portions of the Commons are now enclosed by virtue of other Acts of the Legislature not affected by any adverse decisions of judicial tribunals.

That regarding the Commons in the most favorable light as to capacity for commonage, they find that the entire Common Grounds do not exceed seventy acres and that the inlots entitled to the right of commonage are so numerous as to render the commonage altogether insufficient for the accommodation of all. They therefore find that the right of common is of no pecuniary value to any inlot holder as appurtenant to his inlot. That the value of all the inlots would not be in any way affected with such right of commonage divested, the title to the said grounds remaining in the City and the grounds lying in their present unimproved condition. They therefore find that the appropriation and prospective use of said Common Grounds for Public Parks will greatly enhance the value of every inlot of said City, and that the inlot holders will sustain no damage by reason of the divesting of their right of commonage by the use of said Common Ground for Public Parks, but will derive very great benefits therefrom, and, therefore, award nothing to the twenty-two signers specifically named for the reason that the benefits exceed the damages.

A plan of the Parks was prepared by Mitchell, Grant and Company of New York at a cost of \$1,300, and approved by the Allegheny City Councils in 1867. The present arrangement of the Parks is from this plan.

Such is the story of the Allegheny Parks. The North Side has them in spite of herself, and not because she originally

wanted them, or is entitled to credit for having them, at least until a comparatively late date.

An idea of the attitude of the people of Pittsburgh in the earlier days towards Parks may be gained from the fact that as late as 1869 the voters of Pittsburgh decided against having a Public Park by a majority of 4,500.

I have been told by manufacturers that the scarcity of Public Parks and other facilities for rest and recreation is urged by skilled laborers as a very strong objection against coming to Pittsburgh. Our City has lost valuable manufacturing plants because the skilled workmen necessary to operate them flatly refused to bring their families to Pittsburgh to live for this reason.

Our Parks are of economic as well as social and moral value. It is the duty of every good citizen to help protect, improve and beautify those which we now have, and endeavor to extend and enlarge them whenever it is reasonably possible to do so.

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